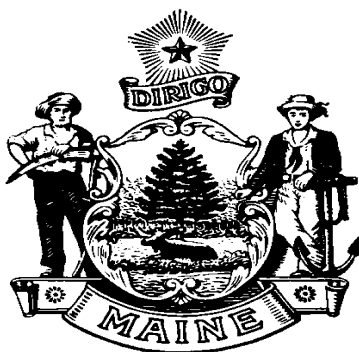


10-144

Chapter 117

REGULATIONS GOVERNING THE LICENSING
AND
FUNCTIONING
OF
ADULT DAY SERVICES PROGRAMS



Department of Human Services
Bureau of Medical Services

Division of Licensing and Certification

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REGULATIONS GOVERNING THE LICENSING AND FUNCTIONING OF
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INTRODUCTION

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INTRODUCTION

These final regulations replace the Emergency Regulations Governing the Licensing and Functioning of Adult Day Services Programs in effect since October 15, 1997 which were replacement regulations for the Bureau of Elder and Adult Services Adult Day Care Program Regulations, Chapter 61, eliminated October 15, 1997.

These regulations are promulgated in accordance with Title 22, M.R.S.A. §7801 and describe the minimum requirements for the licensing and functioning of Adult Day Services Programs and such requirements that the provider must meet regarding application and licensing standards.

Providers previously licensed to provide Certified Adult Day Care Programs shall automatically be converted to the Adult Day Health Services Program. Providers previously licensed to offer Small Group Adult Day Care and Social Adult Day Care shall automatically be converted to the Social Adult Day Services Program unless an application for an Adult Day Health Services Program is submitted to the Department.

These regulations are effective February 1, 1998.

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CHAPTER 1: DEFINITIONS

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Section 1000 DEFINITIONS

The following terms have the following meanings for these rules, as specified:

- 1010 **Abuse** means the infliction of injury, unreasonable confinement, intimidation or cruel punishment with resulting physical harm or pain or mental anguish, sexual abuse or exploitation or the willful deprivation of essential needs (Title 22, M.R.S.A. §3472).
- 1020 **Activities of daily living** means bed mobility, transfer, locomotion, eating, toilet use, bathing and dressing.
- 1030 **Adult** means any person who has attained the age of nineteen (19) years or who is a legally emancipated minor (Title 22, M.R.S.A. §8601).
- 1040 **Adult Day Health Services Program** means an Adult Day Services Program, licensed by the Department of Human Services, Bureau of Medical Services, Division of Licensing and Certification, which provides health monitoring and personal care services in addition to a group program of care, therapeutic activities and supervision.
- 1050 **Adult Day Services Program** means a group program of care, therapeutic activities and supervision maintained or carried out on a regular basis by a person or persons in a private dwelling or other facility, for consideration, for any part of a day, for at least two (2) hours a day, for more than two (2) adults nineteen (19) years of age or older, who are not blood relatives and are coming to the facility for up to seven (7) days a week for the express purpose of participating in this program (Title 22, M.R.S.A. §8601).
- 1060 **Applicant** means the person who is applying for a license.
- 1070 **Conditional License** means a license issued by the Department when an individual or agency fails to comply with applicable laws and rules and, in the judgment of the Commissioner or Commissioner's designee, the best interest of the public would be served by issuing a conditional license. The conditional license shall specify when and what corrections must be made during the term of the conditional license.
- 1080 **Consumer** means a person participating in a licensed Adult Day Services Program, for a fee, who is at least nineteen (19) years of age and is not a blood relative of an Adult Day Services provider.
- 1090 **Deficiency** means a violation of State licensing regulations.
- 1100 **Department** means the Department of Human Services, Bureau of Medical Services, Division of Licensing and Certification, unless otherwise indicated.
- 1110 **Division of Licensing and Certification** is the State agency responsible for licensing Adult Day Services Programs.
- 1120 **Exploitation** means the illegal or improper use of an incapacitated or dependent adult or his/her resources for another's profit or advantage.

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- 1130 **Full License** means a license issued for one year to a provider who fully complies with all applicable laws and regulations.
- 1140 **Licensed Health Care Professional** means health care providers, including physicians, registered professional nurses, licensed practical nurses, physician assistants, pharmacists, nurse practitioners, occupational therapists, speech pathologists, physical therapists, dietitians and social workers who have been authorized to practice a health care profession in accordance with State law.
- 1150 **Limited Assistance** means that the consumer was highly involved in an ADL activity; received physical help in guided maneuvering of limbs, or other nonweight-bearing assistance three (3) plus times, or as just described plus weight-bearing support one (1) or two (2) times during the last seven (7) days. This definition is derived from the MED Version 2.0 Department approved assessment form.
- 1160 **Neglect** means a threat to an adult's health or welfare by physical or mental injury or impairment, deprivation of essential needs, or lack of protection from these.
- 1170 **Night Program** means an Adult Day Services Program delivered between the hours of five (5) PM and seven (7) AM to dementia consumers who are awake and participating in activities during some of those hours.
- 1180 **Plan of Correction** means a section of the Statement of Deficiencies completed by the provider, detailing the plan to correct deficiencies and the completion dates for correcting the deficiencies.
- 1190 **Provider** means the person licensed to operate an Adult Day Services Program.
- 1200 **Program Administrator** means a person responsible for the development, coordination, supervision, fiscal management and evaluation of services provided at the Adult Day Services Program.
- 1210 **Provisional License** means a temporary license issued as an initial license for a term not to exceed twelve (12) months, unless the provider has not served any consumers within the most recent year of operation, at which time the license may be reissued for an additional twelve (12) months. A provisional license may be issued to a provider who has not previously operated the program for which the application is made or is licensed.
- 1220 **Restraints** means any device which is intended to restrict freedom of movement or access to one's body, or any medication which alters cognition or behavior and which is used for discipline or convenience and is not required to treat medical symptoms.

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- 1230 **Social Adult Day Services Program** means an Adult Day Services Program designed to meet the social and supervisory needs of participating adults.
- 1240 **Staff Member** means employees and volunteers who conform to the same standards and requirements as paid staff.
- 1250 **Statement of Deficiencies** (hereafter SOD) means a document issued by the Department which describes an Adult Day Services Program's deficiencies in complying with these regulations.
- 1260 **Submit** means to deposit in the US mail or to hand deliver to the Department.
- 1270 **Therapeutic Activities** means restorative activities designed to maintain or improve the quality of one's life or delay deterioration of skills. Examples of therapeutic activities include gross motor activities, social activities, sensory enhancement activities, crafts, outdoor activities, spiritual activities and activities of daily living (hereafter ADL).

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CHAPTER 2: OBTAINING A LICENSE

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2000 OBTAINING A LICENSE

2010 **Requirements.** Adult Day Services is a group program designed to meet the needs of adults who, through an assessment and service plan, are determined to need therapeutic activities and services of socialization, supervision, support services, assistance with activities of daily living and/or health monitoring.

2010.1 No person or entity shall operate an Adult Day Services Program of more than two (2) clients without a license from the Department in force, authorizing such operation. (Title 22, M.R.S.A. §7801)

2010.2 The person or entity applying for the license shall be responsible for complying with Maine Statutes and regulations adopted pursuant thereto. (Title 22, M.R.S.A. Section 7801)

2010.3 Reimbursement shall not be accepted by any person for rendering Adult Day Services for more than two (2) persons who are not blood relatives, without such person having first secured a license in force, authorizing such operation in accordance with these regulations.

2020 **Appointment of Program Administrator.** Each licensee shall appoint an administrator, who shall be responsible for complying with these rules. The administrator must be at least twenty-one (21) years of age. When the administrator is not on-site for at least fifty percent (50%) of the hours of operation, the administrator shall appoint an individual to be responsible for site operation and management during those hours of operation.

2030 **Application Procedure**

2030.1 **Filing of Application.** Any person, partnership, association or corporation desiring a license to operate an Adult Day Services Program, prior to the commencement of such operation, shall file with the Department a verified, complete application. All applicants shall submit satisfactory evidence of their ability to comply with the minimum standards and all regulations adopted thereunder, and whether the applicant(s) are at least twenty-one (21) years of age.

2030.2 **Policies to be submitted with the application:**

- a. A written refund policy;
- b. A complaint resolution policy;
- c. A medication administration policy;
- d. A confidentiality policy;
- e. An admissions policy on participants who are appropriate;

2030.3 **Proof of Insurance.** All applicants shall submit proof of liability insurance and property damage insurance with the application. If the applicant provides transportation, proof of vehicle liability insurance shall also accompany the application.

2030.4 **Fees.** Each application for a license to operate an Adult Day Services Program shall be accompanied by a non-refundable fee as determined by the Department. All licenses issued shall be renewed annually upon payment of a like fee and compliance with Maine Revised Annotated Statutes and any rules and regulations issued thereunder. There shall

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be a minimum \$10 application fee for a licensed capacity of up to ten (10) consumers, a \$20 application fee for eleven to twenty (11-20) consumers, a \$30 application fee for twenty-one to thirty (21-30) consumers, a \$40 application fee for thirty-one to forty (31-40) consumers, and a \$50 application fee for forty-one (41) or more consumers.

2030.5 **Additional Information.** Each applicant shall provide to the Department such information as the Department may require, in order to determine whether the applicant meets licensure requirements and is in conformity with the provisions of the Maine Revised Annotated Statutes and rules and regulations promulgated thereunder.

2040 **Additional Program Requirements.** In addition to the other requirements of this Chapter, each application for initial licensing shall provide:

2040.1 **Floor Plans.** A set of plans and specifications drawn to scale, demonstrating that the total space used for program activities provides at least fifty (50) square feet per consumer. Programs located in licensed nursing facilities and congregate housing facilities must provide distinct space meeting these requirements.

2040.2 **Copy of Lease.** When a building is leased to the person or persons to operate as a licensed Adult Day Services Program, a copy of the lease, showing which party to the agreement is to be held responsible for the maintenance and upkeep of the property, shall be available to the Department upon request.

2040.3 **Compliance with Local Laws.** A letter from the appropriate municipal official having jurisdiction over the premises where the program is to be located indicating compliance with all local laws or codes relative to the type of program for which licensure is requested. Adult Day Services Programs located in licensed facilities shall be exempt from submitting further evidence of compliance.

2040.4 **Emergency Plan.** A written plan for handling emergencies shall be developed and posted at the site. Each program shall have a centrally located and readily available first aid kit and staff shall be instructed in the use of any item in the kit.

2050 **Issuance of License.**

2050.1 **Specifications of License.** Each license issued by the Department shall:

- a. Specify the name of the program;
- b. Specify the name of the administrator;
- c. Specify the type of program;
- d. Specify the maximum allowable number of consumers licensed to serve, which number shall not be exceeded;
- e. Identify any waivers that have been granted;
- f. Identify if a program is approved to provide a Night Program;
- g. Specify the effective dates of the license.

2060 **Changes.**

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- 2060.1 **Increases in Licensed Capacity.** Requests for any increase in the number of consumers the Adult Day Services Program is licensed to serve shall be made in writing to the Department. No increases in the number of consumers a program is licensed to serve shall be made without prior written approval from the Department.
- 2060.2 **Changes in Program.** Requests to change or add a program shall be made in writing to the Department. No change of program shall be made without prior written approval from the Department. An Adult Day Services Program shall be licensed as a Social Adult Day Services Program and/or an Adult Day Health Services Program. No Social Adult Day Services Program nor an Adult Day Health Services Program may provide a Night Program, without having first applied for and received a license to provide a Night Program.
- 2060.3 **Change of Administrator.** A request to change an administrator shall be made in writing to the Department within seventy-two (72) hours of the change taking effect and a new license application indicating the name of the new administrator must be submitted to the Department within sixty (60) days. An acting administrator may be appointed for a period not to exceed sixty (60) days. If no permanent administrator has been secured and no new application is submitted by the end of the sixty (60) day period, the license becomes null and void, unless an extension of time has been approved by the Department. No extension will be granted unless the licensee demonstrates that a reasonable attempt has been made to find a suitable replacement.
- 2070 **Waiver Provisions.** The Department may waive any provision of these regulations not mandated by Federal or State statute.
- 2070.1 To request a waiver, the program must make a written application to the Department prior to the issuance or renewal of any license. Such application shall contain a written justification for the request, shall state the specific provisions of these regulations for which a waiver is being requested and document what steps the program is taking or will take to bring such program into compliance with those provisions of these regulations for which a waiver is sought.
- 2070.2 No waiver shall be granted if there would be an adverse effect to the health and safety of the consumers of the program.
- 2070.3 The Department may request additional information before making a decision as to granting or denying an application for a waiver.
- 2070.4 No waiver shall be extended beyond the term of the license and a new waiver shall be required when the license of the program is renewed.
- 2070.5 The program will be notified in writing when a waiver is granted and the specific area for which a waiver has been granted shall be noted on the license.
- 2080 **Enforcement Procedures.** After inspection, an SOD will be sent to the Adult Day Services provider if an inspection identifies any failure to comply with licensing regulations. The Adult Day Services provider shall complete a POC for each deficiency, sign the plan and submit it to the Department within ten (10) working days of receipt of any SOD.
- 2090 **Posting of License.** The license shall be conspicuously posted in an area highly visible to consumers and the public.

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- 2100 **Availability of Survey Results.** Programs will post the results of State surveys, which include the plan of correction, in a place readily accessible to consumers, consumer representatives and the general public. Copies of these surveys shall be provided by the program upon reasonable request.
- 2110 **Departmental Obligations.** The Department of Human Services, Bureau of Medical Services, Division of Licensing and Certification is responsible for reviewing all application materials to determine eligibility for licensure, for issuing licenses, for evaluating the adequacy of care provided and the adequacy of the site. The Department may make unannounced visits to evaluate compliance with regulations and to talk with consumers in private.

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CHAPTER 3: RENEWAL OF, LOSS OF, TEMPORARY & CONDITIONAL LICENSES

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3000 RENEWAL OF, LOSS OF, TEMPORARY & CONDITIONAL LICENSES

- 3010 **Right of Entry and Inspection.** The Department and any duly designated representative thereof shall have the right to enter upon and into the premises of any licensed program site pursuant to these regulations at any time, in order to determine the state of compliance with the provisions of regulations in force pursuant thereto. Such right of entry and inspection shall extend to any premises which the Department has reason to believe is being operated or maintained as an Adult Day Services Program without a license, but no such entry or inspection of any premises shall be made without the permission of the owner or person in charge thereof unless a warrant is first obtained from the court of jurisdiction authorizing the same. Any application for a license made pursuant to these regulations shall constitute permission for, and complete acquiescence in, any entry or inspection of the premises for which the license is sought in order to facilitate verification of the information submitted or in connection with such application.
- 3020 **Provisional License.** The Department shall issue a provisional license for up to twelve (12) months when an applicant complies with all applicable laws and regulations, except those which can only be complied with once consumers are served by the applicant and the applicant demonstrates the ability to comply with all applicable laws and regulations by the end of the provisional term. The Department may reissue a provisional license for up to another twelve (12) months if no clients were served during the first twelve (12) months of operation. A provisional license may also be issued to a provider who has not previously operated the program for which the application is made or is licensed. No provisional license shall be extended beyond twenty-four (24) consecutive months.
- 3030 **Refusal to Issue a License.** The Department shall refuse to issue a license to the applicant identified in the application if it finds the representation made in the application to be materially incorrect or insufficient, or if it finds that the applicant or designated administrator of the program does not meet all requirements of law and regulations.
- 3040 **Renewal of License.** At least twenty (20) days prior to the expiration of a license to operate an Adult Day Services Program, an application and the required fee for a renewal thereof shall be submitted to the Department on a form supplied by the Department, and accompanied by such additional information as may be required. Upon receipt and review of applications and determination of compliance with the requirements of the Maine Revised Statutes Annotated and any regulations adopted pursuant thereof, the Department shall renew such license for a period of one (1) year, unless it finds that there are specific and sufficient grounds either for the denying of the application for renewal or for renewing the license on a temporary or conditional basis. If timely application for renewal is made, the existing license shall continue until a final decision on the renewal is made.
- 3050 **Conditional License.** A conditional license or approval may be issued by the Department when the individual or agency fails to comply with applicable law and rules and, in the judgment of the commissioner, the best interest of the public would be so served by issuing a conditional license or approval. The conditional license or approval shall specify when and what corrections must be made during the term of the conditional license or approval, which shall not exceed twelve (12) months.
- 3060 **Suspension, Revocation or Refusal to Renew a License.** The Department may suspend, revoke or refuse to renew a full, provisional or conditional license for violation of applicable laws and regulations; for committing, permitting, aiding or abetting any illegal practices in the operation of the program; or, for conduct or practices detrimental to the welfare of consumers participating in the program. Notice of the Department's decision shall be given in writing to the program

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administrator, stating the reasons and notifying the provider of the appeal process specified in this Chapter. The Department will notify all consumers and their legal representatives of any such action and allow thirty (30) days for orderly closure. If, in the opinion of the Department, the health and safety of consumers is in immediate danger, the Department may cause the immediate closure by filing a verified complaint with the Administrative Court seeking summary action pursuant to Title 4, M.R.S.A. §1153.

- 3070 **Appeal Rights.** Any Adult Day Services Program aggrieved by the Department's decision to take any of the following actions may request an administrative hearing to refute the basis of the Department's decision, as provided by the Maine Administrative Procedures Act, Title 5, M.R.S.A. §9051 *et seq.* Administrative hearings will be held in conformity with the Department's Administrative Hearing Regulations Manual. A request for a hearing must be made, in writing, to the Director of the Division of Licensing and Certification, and must specify the reason for the appeal. Any request must be mailed within ten (10) working days from receipt of the Department's decision to:

3070.1 Issue a Conditional license;

3070.2 Amend or modify a license;

3070.3 Void a Conditional license;

3070.4 Refuse to issue or renew a full license;

3070.5 Refuse to issue a Provisional license.

- 3080 **Voluntary Closure of an Adult Day Services Program.** Whenever a licensed Adult Day Services Program voluntarily discontinues operation, the administrator shall notify the Department within thirty (30) days of the projected closing date. Immediately upon discontinuance of operation of an Adult Day Services Program, the administrator shall surrender the license to the Department.

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CHAPTER 4: ADMINISTRATION

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4000 ADMINISTRATION

4010 Administrator Requirements.

4010.1 Qualifications. The administrator of an Adult Day Services Program shall have management and supervisory experience in a social or health service setting or comparable technical or human service training or experience, with demonstrated competence and experience in a health or human service setting.

4010.2 Determination of Qualification. A determination of qualification shall require the applicant and proposed administrator to demonstrate their willingness and ability to operate and manage an Adult Day Services Program with mature judgment, compassionate regard for the best interests of the consumers and consistent compliance with these regulations and all relevant laws. In making this determination, the Department shall consider each of the following factors to the extent that they are relevant to the proposed program, ownership interest and/or employment:

- a. Record and reputation for honest and lawful conduct in business and personal affairs. The provider shall, as part of the license application and renewal process, authorize the Department to review the records of professional licensing boards or registers, any criminal record, child protective record or adult protective record necessary to determine compliance with these rules;
- b. Experience in the field of health care, social services or areas related to the provision of Adult Day Services programs;
- c. Conduct which demonstrates an understanding of, and compliance with, consumer rights;
- d. Information which relates to the ability, willingness or disposition towards compliance with all applicable laws and regulations;
- e. Any information reasonably related to the ability to provide knowledgeable, safe and quality services to the consumer population served.

4020 Complaints

4020.1 Any person may file a complaint regarding program operation directly with the program administrator or any member of the program staff.

4020.2 A system shall be established for the review of each complaint received, within forty-eight (48) hours of receipt of the complaint, by the administrator and/or any designated member of the program staff. A written report of findings and action taken shall be prepared and kept on file and made available for review upon request of the Department. The complainant shall be given a copy of the written findings and resolution within ten (10) days of making the complaint. The complainant may appeal to the Department, if dissatisfied with the written findings and resolution. A complaint may also be directed to the Ombudsman Program. The provider is responsible for informing the complainant of the appeal procedure in writing, including the appropriate address and telephone numbers of the Division of Licensing and Certification and the Long Term Care Ombudsman.

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CHAPTER 4: ADMINISTRATION

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- 4030 **Refunds.** The program shall refund payments to consumers for services not received within thirty (30) days of the overpayment. The program's refund policy shall detail circumstances for refunds, consumer and provider obligations.
- 4040 **Rates/Contracts.**
- 4040.1 **Rates.** Each program shall make its rates available to the public upon request. Each program shall describe the services covered as part of the rate and any other charges not covered by the basic rate. The provider shall give at least thirty (30) days written notice prior to any changes in rates and charges, responsibilities or services to be provided.
- 4040.2 **Provisions of the Contract.** When there is a contract, the consumer or designated representative shall be given an original of the signed contract and the Adult Day Services provider shall keep a duplicate original in the consumer's file. Each contract shall specify services included in the program as well as a provision prohibiting the program from holding anyone but the consumer responsible for the contract charges. No contract may contain a provision which is contrary to the services, rights and obligations of these regulations.
- 4050 **Reporting of Abuse and Neglect.**
- 4050.1 The program must ensure that all staff are knowledgeable of the Adult Protective Services Act. When, while acting in a professional capacity, a mandated reporter suspects that an adult has been abused, neglected or exploited, and has reasonable cause to suspect that the adult is incapacitated, then that person shall immediately report or cause a report to be made to the Department of Human Services, Bureau of Elder and Adult Services, Adult Protective Services. When the alleged victim has mental retardation, the report must be made to the Department of Mental Health, Mental Retardation and Substance Abuse Services.
- 4050.2 The provider is responsible for conducting an internal investigation when staff are implicated in the alleged violations while simultaneously reporting to Adult Protective Services. The program must have evidence that all alleged violations are thoroughly investigated in a timely manner. Policies must address administrative procedures to be implemented to prevent further potential neglect, abuse or exploitation while the investigation is in progress.
- 4050.3 The results of all investigations conducted must be reported to the administrator or designated representative and to other officials in accordance with State law. If the alleged violation is verified, appropriate corrective action must be taken. All reports must be made available to the Department of Human Services, Division of Licensing and Certification, upon request.

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CHAPTER 5: STAFF QUALIFICATIONS

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5000 STAFF QUALIFICATIONS

- 5010 **Personnel Policies.** The program shall have policies that address all personnel practices including job descriptions, orientation, training and evaluation.
- 5020 **Staff Qualifications.** The program must employ, on a full time, part time or consulting basis, those persons necessary to carry out the provisions of these regulations. Preference shall be given to staff who have a minimum of one (1) year of training or experience in social or health care services. An Adult Day Services Program that is co-located in a licensed Nursing or Assisted Living Facility shall schedule staff with distinct hours that are assigned to the Adult Day Services Program.
- 5030 **Staff Requirements.** Adult Day Services Programs shall maintain a minimum staff to consumer ratio of one to six (1:6) at all times when consumers are present. Adult Day Services Programs with three to six (3-6) consumers must maintain a second staff person to be on call and available for emergencies at all times that consumers are present. The Department may require additional staff based on the needs of the consumers served.

Required Minimum Staff to Consumer Ratio:

Number of Staff

1
2
3
4
5
6
7
8
9
10

Number of Consumers

3-6
7-12
13-18
19-24
25-30
31-36
37-42
43-48
49-54
55-60

For each 6 consumers above 60, there will be an additional staff person employed.

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- 5040 **Volunteers.** Volunteers may be included in the staff ratio only when they conform to the same standards and requirements as paid staff, meet the job qualification standards of the organization and have designated responsibilities.
- 5050 **Required Inservice Training Programs.**
- 5050.1 There shall be an orientation program for all new employees and volunteers that includes a review of applicable program policies, consumer rights, emergency procedures and fire safety, job description and related responsibilities, confidentiality, communication skills, needs of the population served, elder abuse reporting, Standard Precautions and licensing regulations.
- 5050.2 The program must also provide at least six (6) hours a year for part time and volunteer staff (twenty (20) hours or less per week) and a minimum of twelve (12) hours per year education and training to all full time employees and volunteers who meet the job qualification standards and have designated responsibilities twenty-one (21) hours a week or more.
- 5050.3 The annual training programs shall be planned and include topics relating to consumer rights, emergency preparedness, workplace safety, body mechanics, choking prevention and intervention techniques, basic nutrition and food safety, first aid, behavioral interventions and specific training for services related to consumers with cognitive impairments and those conditions which may be applicable to the consumer population served.
- 5060 **Personnel Records**
- 5060.1 **Employment History.** A record shall be completed for each staff member, kept on file at the program site or at the agency central office, and shall be available to Department personnel for inspection. Each record shall contain documentation of references and background checks, dates of employment, home address, education or background, social security number, past experience or type of employment, where previously employed, job description of position employed for in this program and the current occupational license number, when applicable and date/reason for terminating employment. Records shall be kept at least two (2) years after termination of employment.
- 5060.2 **Training.** Records shall be maintained of staff and volunteer attendance at training and other educational programs.
- 5070 **Monthly Time Schedule.** Each program shall maintain a dated staff monthly time schedule in a convenient place for staff use. This shall contain each employee's name, job title and hours of work. This monthly time schedule shall be kept on file at the program site or at the agency central office for at least two (2) years and shall be available to Department personnel for inspection.
- 5080 **Confidentiality Agreement.** All paid employees and volunteers shall sign a confidentiality agreement and hold all information about consumers and families in confidence.
- 5090 **Employees with Contagious or Infectious Diseases.** No licensed program shall employ or otherwise permit any person to serve therein in any capacity if such person has a communicable or infectious disease or condition which would make him/her dangerous to the health and welfare of consumers therein.

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- 5100 **Employment Restrictions.** The program may not employ individuals who have been convicted by a court of law of abusing, neglecting, mistreating, exploiting individuals or misappropriating funds in a health care or related setting.
- 5110 **Age Requirement.** No person under the age of eighteen (18) shall fulfill the staffing requirements for this program, unless one is enrolled in a health related course of study and one is at least sixteen (16) years of age and otherwise meets all the employment requirements outlined herein. There must be documented proof of enrollment in a health related course of study in the employee file.
- 5120 **Employees Administering Medications.** Unlicensed employees administering medications to consumers shall successfully complete, at a minimum, a Department approved Medication Course before administering any medications. Anyone having taken this course within the last twelve (12) months or who was employed in a health care setting where medication administration was part of the employee's responsibilities during that same time period shall not be required to take the Department approved Medication Course as a prerequisite to administering medications at the Adult Day Services Program. Whenever the standards or guidelines of the medication administration course are revised, unlicensed personnel must be recertified within one (1) year of the revision by a method approved by the Department.

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6000 ENVIRONMENTAL SAFETY

6010 **Environment and Safety.** Any Adult Day Services Program must comply with State and local health, fire, safety, building and sanitation laws, ordinances or codes.

6010.1 No license to operate an Adult Day Services Program shall be issued or re-issued until the program site has passed inspection by the State Fire Marshal Office and a written report signed by the State Fire Marshal has been provided to the Department.

a. Each program must have a fire safety plan. This plan and any changes in it are to be developed in conjunction with and approved by local or State fire authorities. The plan shall be posted conspicuously in the program area and shall include:

1. Fire safety measures to be taken;
2. Location of emergency exits;
3. Evacuation procedures;
4. The telephone numbers of police, fire, ambulance, physicians or other individuals to contact in an emergency;
5. The number and placement of smoke detectors.

b. Drills or rehearsals of the emergency steps to be taken shall be conducted at irregular times of day at least once each month (Title 22, M.R.S.A. § 8605). A record shall be kept on forms approved by the Department showing the date and time of each drill and the evacuation time of the drill. Day services providers shall be knowledgeable about and shall inform and train staff about the use of fire safety equipment. At the time of admission and at least semiannually after admission, consumers shall be informed of emergency procedures.

6010.2 Water used for drinking and cooking purposes, if not from a municipal system, must meet the standards of the Department of Human Services, Division of Health Engineering, Bureau of Health. The supply must be tested at least annually and a written report of the annual water test must be submitted with all applications and reapplications for licensure.

6020 All rooms used by consumers must have adequate light, ventilation and heating and present no hazards to consumer's health and welfare. The program site must be equipped with a heating system capable of maintaining a temperature of at least seventy (70) degrees Fahrenheit throughout the program space area(s). Windows and doors used for ventilation must be effectively screened. The rooms shall be furnished with sufficient comfortable nonfolding chairs, nonfolding tables, rocking and reclining chairs.

6030 The site must have at least two (2) exits remote from one another that are kept clear at all times.

6040 There must be a telephone accessible to consumers for their use.

6050 Every part of the building intended for consumer use must meet applicable State and Federal guidelines for handicapped accessibility.

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- 6060 The program space shall be kept clean and shall be maintained in a condition that ensures the health and safety of consumers. Consumers shall be able to move freely from room to room, with no barriers or hazards impeding free movement.
- 6070 All animals living or visiting at the program site shall have a current license .
- 6080 **Sanitation and Safety**
- 6080.1 **Facility Cleanliness.** All reasonable precautions shall be taken in maintaining a safe, sanitary and comfortable living environment. There shall be no evidence of rodent or insect infestation.
- 6080.2 **Food Safety and Sanitation.** Food shall be stored, prepared and served in a safe and sanitary manner, including at a minimum:
- a. Kitchen and food preparation areas shall be located away from possible food contamination sources;
 - b. Kitchen and food preparation areas shall be clean and food stored so as to be free from spoilage and contamination;
 - c. All equipment, dishes, glassware and cooking utensils shall be in good repair.
- 6080.3 **Plumbing, Water Supply and Sewage Disposal.** The facility shall comply with all State and local laws and regulations relating to plumbing, water supply and sewage disposal.
- 6080.4 **Poisonous and Toxic Materials.** When not in use, poisonous and toxic materials such as cleaning solutions, compounds and other non-food supplies, shall be stored in compartments which are used for no other purpose and which are separated from the food storage and preparation areas, cleaning equipment and utensil storage rooms and medication storage areas. Bactericides and cleaning compounds shall not be stored in the same cabinet or area of the room with insecticides, rodenticides or other poisonous materials.
- 6090 **Dietary Services.** For those programs preparing or serving food at the Adult Day Services Program site, the following shall apply:
- 6090.1 **Adequacy of Diets.** The program shall provide each consumer with a nourishing, well-balanced diet that meets one-third of the daily nutritional and special dietary needs of each consumer and that meets the Recommended Dietary Allowances of the Food and Nutrition Board of the National Research Council, National Academy of Sciences, adjusted for age, sex and activity.
- 6090.2 **Menus.** Menus shall be planned at least a week in advance, shall be available to consumers and shall be kept on file for three (3) months.
- 6090.3 **Therapeutic Diets.** Therapeutic diets ordered by a duly authorized licensed practitioner are considered treatments and shall be ordered in writing.
- 6090.4 **Milk and Milk Products.** Only pasteurized milk and milk products shall be used. No reconstituted powdered milk or evaporated milk shall be served for drinking. Dry or evaporated milk shall only be used for cooking.

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6090.5 **Refrigerated Storage.** Foods requiring refrigeration shall be cooled to a temperature of forty-one (41) degrees Fahrenheit or below. Eggs shall be refrigerated at all times. Frozen food shall be kept frozen at a temperature of zero (0) degrees Fahrenheit or below.

6090.6 **Thawing Potentially Hazardous Foods.** Potentially hazardous foods shall be thawed as follows:

- a. In refrigerator units at a temperature not to exceed forty-one (41) degrees Fahrenheit; or
- b. In a microwave oven, only when the food will be immediately transferred to conventional cooking facilities as part of the continuous cooking process or when the entire uninterrupted cooking process takes place in the microwave oven; or
- c. As part of the continued cooking process.

6090.7 **Cooking Potentially Hazardous Foods.**

- a. Poultry, poultry stuffing, stuffed meats and stuffing containing meat shall be cooked to heat all parts of the food to at least 165 (one hundred sixty-five) degrees Fahrenheit, with no interruption in the cooking process;
- b. Pork and any food containing pork shall be cooked to heat all parts of the food to at least one hundred fifty (150) degrees Fahrenheit;
- c. Rare roast beef and rare beef steak shall be cooked to an internal temperature of at least one hundred thirty (130) degrees Fahrenheit, unless otherwise requested by the consumer;
- d. Potentially hazardous foods that have been cooked and then refrigerated shall be reheated rapidly to one hundred sixty-five (165) degrees Fahrenheit or higher throughout before being served;
- e. Custards, cream fillings or similar products shall be kept at safe temperatures of forty-one (41) degrees Fahrenheit or below, except during necessary periods of preparation and service.

6090.8 **Second-Grade Products Prohibited.** Second-grade products, such as unlabeled canned goods, home canned goods, improperly or unsealed containers or packages and outdated foods are prohibited from use.

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7000 CONSUMER RIGHTS

- 7010 Procedures shall be developed and adhered to for training of program staff concerning these policies and procedures, and for making policies available to consumers or to any guardians.
- 7020 **Exercise of Rights.** A program must protect and promote the rights of each consumer, including the following:
- 7020.1 The consumer has the right to exercise his or her right as a participant of the program and as a citizen or resident of the United States.
- 7020.2 The consumer has the right to be free of interference, coercion, discrimination or reprisal from the program for exercising his or her rights.
- 7020.3 In the case of a consumer adjudicated incompetent under the laws of the State by court of competent jurisdiction, the rights of the consumer are exercised by the person appointed under State law to act on the consumer's behalf.
- 7020.4 The consumer has the right to inspect all records pertaining to himself/herself, upon oral or written request, within twenty-four (24) hours. Photocopies may be purchased and the program shall provide them within two (2) working days of the request.
- 7020.5 The program must display information regarding advocacy and legal assistance services.
- 7020.6 The consumer has the right to personal privacy for medical treatment, personal care and telephone communication, but this does not require that the program site provide a private room.
- 7020.7 The consumer has the right to approve or refuse the release of program records to any individual or organization outside the program. The consumer's right to refuse release of program records does not apply when a record release is required by law or by third-party payment contract or when copies are requested by the Department.
- 7020.8 The consumer has the right to voice grievances without discrimination or reprisal for voicing the grievances.
- 7020.9 The consumer has the right to file a complaint with the Division of Licensing and Certification, the Long Term Care Ombudsman Program, Legal Services for the Elderly and the Bureau of Elder and Adult Services respective to abuse, neglect and exploitation at the program site.
- 7020.10 The consumer has the right to examine the most recent Division of Licensing and Certification survey findings of the program and any plan of correction in effect.
- 7020.11 The consumer has the right to refuse to perform services for the program.
- 7020.12 The program must permit each consumer to participate in the Adult Day Services Program and not discharge the consumer from the program unless:
- a. The safety and/or health of consumers in the program is endangered;

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- b. The consumer has failed, after reasonable and appropriate notice, to pay for (or to have paid by Medicaid or a third-party payer) services at the program;
 - c. The program ceases to operate.
- 7020.13 The consumer has a right to be notified in writing of the reasons for discharge from the program. This notice shall be in a language understood by the consumer and shall contain the effective date of the discharge. A minimum of two (2) weeks notice shall be given to the consumer, unless the safety and/or health of other consumers in the program would be endangered.
- 7020.14 The consumer has the right to be free from any physical restraint imposed or psychoactive drug administered for purposes of punishment for certain behaviors or to accommodate the needs of the staff.
- 7020.15 The consumer has the right to choose activities consistent with his/her interests, assessments and service plans.

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8000 ASSESSMENTS, SERVICE PLANS AND CONSUMER RECORDS

8010 **Comprehensive Assessment.** Each consumer attending the program shall have a comprehensive written assessment. The assessment shall commence no later than the first day of program participation and shall be completed within thirty (30) calendar days.

8010.1 If the provider does not use the Department approved assessment tool, the assessment shall include at a minimum:

- a. Identification and background information.
 1. Individual's name, address and Social Security number;
 2. Age, date of birth;
 3. Gender;
 4. Marital status;
 5. Living arrangements;
 6. Responsible party and emergency contacts;
 7. Advanced directives;
 8. Previous occupation(s), special interests and hobbies.
- b. Medical history.
 1. Medical diagnoses;
 2. List of prescribed medications.
- c. Professional medical services.
 1. Nursing treatments or services received at home;
 2. Therapies.
- d. Functional status.
 1. Vision;
 2. Communication/hearing;
 3. Nutritional status, including weight;
 4. Oral/dental status;
 5. Skin condition;
 6. Continence;

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- 7. Activities of daily living performance including locomotion, transfer ability, eating, personal hygiene, dressing, toilet use and bathing;
 - 8. Use of assistive devices.
- e. Cognition status.
 - 1. Spatial orientation;
 - 2. Memory for events;
 - 3. Memory and use of information.
- f. Behavior.
 - 1. Sleep patterns;
 - 2. Wandering;
 - 3. Behavioral demands on others;
 - 4. Danger to self and others;
 - 5. Awareness of needs/judgment.
- g. Support services.
 - 1. Family caregiver(s) status;
 - 2. Other informal support network.

8010.2 The assessment process.

- a. The assessment is conducted with the consumer, guardian and/or designated representative. Upon completion, staff completing the assessment must date and sign the assessment.
- b. If the assessment is completed by a designated Department assessor within six (6) weeks prior to the consumer's participation in the program, the Adult Day Services provider may use this assessment and shall include a copy of this assessment in the record.

8010.3 Review of assessments. Each consumer assessment must be reviewed as often as necessary, but not less than once every six (6) months. The assessment shall be revised to assure continued accuracy of the assessment.

8010.4 Reassessments. Each consumer must have a comprehensive assessment completed every twelve (12) months.

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8020 **Service Plan.** A service plan must be developed for each individual admitted to the program. The service plan shall be developed in cooperation with the consumer, the guardian or designated representative within seven (7) calendar days of completion of the assessment. At least one (1) staff person shall be responsible for the development and monitoring of service plans. The service plan shall be reviewed and updated as often as necessary, but no less than every six (6) months. Each program shall have a written policy/procedure to govern the development, implementation and management of service plans.

8020.1. The service plan shall be based on a comprehensive assessment and shall contain at a minimum:

- a. A statement of the consumer's problems, needs, strengths and resources;
- b. Measurable goals, time frames and objectives for meeting identified needs;
- c. A reflection of staff approach to maintain or improve functional abilities of the consumer;
- d. An accurate reflection of the consumer's assessment;
- e. Plans for coordinating with other health and social service agencies for the delivery of services, if applicable;
- f. Long and short term goals.

8030 **Progress Notes.** Client records shall include at least monthly progress notes noting observations of the client and progress which the client has made in relation to the service plan. The progress note shall include the signature of the person making the notation and the actual date of the progress note.

8040 **Consumer Records.** In addition to the assessment, service plan and monthly progress notes, each Adult Day Services Program shall maintain comprehensive and complete consumer files which include at a minimum:

8040.1 Listing of dates and hours of consumer attendance;

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- 8040.2 A signed release of information, specific as to the information being released and time-limited for no more than one (1) year with a stipulation that permission to release information may be revoked in writing by the consumer or guardian at any time;
- 8040.3 Signed physician orders for prescribed medications, prescribed diet and treatments to be administered while at the program;
- 8040.4 Statement of limitations, if any, to client participation in the program;
- 8040.5 Transportation arrangements to the program;
- 8040.6 Discharge planning considerations and date and reason for discharge.
- 8050 **Medication Records.** When medications are administered to consumers during program operation, the following shall be included in the individual consumer record:
- 8050.1 An individual medication administration record shall be kept for each consumer of all treatments, drugs and medications ordered by the duly authorized licensed practitioner, including the name of the drug, the dosage, route and the time(s) to be given;
- 8050.2 An individual medication administration record shall be kept for each consumer for all over-the-counter medications administered by program staff. Written authorization from the consumer or legal representative must be obtained prior to all medication administration at the program site.
- 8050.3 An entry shall be made by program staff on the medication administration record to indicate whenever a medication, including a medication ordered to be administered as needed, or a treatment is started, given, refused or discontinued. A prescribed medication shall not be discontinued except with evidence of a stop order. A stop order shall be signed and dated by the duly authorized licensed practitioner for prescriptions ordered without an end date;
- 8050.4 Medication errors and reactions shall be recorded in the consumer's record. Medication errors include errors of omission as well as errors of commission. Errors in documentation or charting are errors of omission.
- 8060 **Consumer Records.** All consumer records must be kept confidential in controlled access files. Records shall be kept at the program site or at the agency central office for a minimum of five (5) years after the client ceases to participate in the program. Should the Adult Day Services Program cease to operate, the provider is responsible for storing all consumer and program records for five (5) years and the program license shall be forwarded to the Department within thirty (30) days of program termination.

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9000 ADULT DAY SERVICES PROGRAMS

- 9010 **Adult Day Services Programs.** Adult Day Services Programs include a Social Adult Day Services Program and an Adult Day Health Services Program, which are differentiated by the intensity and scope of service delivery. Each program shall comply with all the general licensing standards as well as the program specific requirements outlined herein. A provider may be licensed for more than one (1) program, as long as the record keeping is distinct.
- 9020 **Therapeutic Activities.** Therapeutic activity is the emphasis and focus of Adult Day Service Programs. The plan for therapeutic activity should be an integral part of the overall service plan, promoting a consumer's optimal functioning. Activities should be meaningful, have a purpose, be voluntary, and reflect positively the consumer's sense of self. Activities shall be varied to meet the needs of consumers, providing a structure of daily activities combined with the ability of staff to adapt activities to meet the needs of the consumer group and provide individual programming, if necessary. The therapeutic activities program should provide quieting and stimulating activities at varied times of the day, activities that are age appropriate, activities that provide opportunities for physical fitness, for creative self expression and exploration of interests, for stimulation of recent and long term memory and for consumers to participate in community outings.
- 9030 **Social Adult Day Services Program.** A Social Adult Day Services Program is designed to meet the social and supportive service needs of individuals attending the program.

This may include socialization, supervision, supportive services and/or limited assistance with activities of daily living (ADLs).

9030.1 **Required Services.** A Social Adult Day Services provider shall provide the following services:

- a. Supervision;
- b. Social, leisure, physical, therapeutic and/or educational activities appropriate to the consumer's ability and interest;
- c. Assistance with ADLs;
- d. A morning and afternoon refreshment .

9030.2 **Optional Services.**

- a. Meals may be provided as part of the service delivery. Meal preparation and menus shall adhere to standards described in the Environmental Safety section of Chapter 6 of these regulations.
- b. Medication administration services may be offered provided the requirements of Section 5120 are met. Providers may assist with medication if requested in writing by a consumer or their designated representative on a form approved by the Department. Medications shall be in original containers as labeled by a pharmacist. Consumers may keep possession of medications for self-administration as long as it poses no danger to other consumers and the consumer is able to self-administer medications appropriately. Medications administered by program staff must be stored in a locked cabinet. Licensed

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nurses may transfer medications from original containers to pill boxes for convenience of administration. Pill boxes shall contain the consumer's name, days of the week and times of day. In such instances, the licensed nurse shall date and sign in the record which medications were transferred, the dosage and for which intended dates and times of administration. Both original containers and pill boxes shall be kept in a locked cabinet.

Telephone orders shall be accepted only by a registered or licensed nurse or pharmacist. Facsimile orders are acceptable legal orders as long as they are in compliance with the Commission on Pharmacy rules and regulations. Written dated telephone orders must be signed by the duly authorized licensed practitioner within ten (10) working days.

Medications left at the program site by consumers who have been discharged from the Adult Day Services Program shall be destroyed by the program administrator and witnessed by one competent person who is not a consumer no later than thirty (30) days after the consumer's discharge. Discontinued medications unused for sixty (60) days shall either be destroyed within sixty (60) days of discontinued use or returned to the consumer or guardian in person. The destruction shall be conducted so that no person can use, administer, sell or give away the medication. Individual unit doses may be returned to the responsible party and a credit or rebate from the pharmacy made to the person who originally paid for the medication. Amounts destroyed or returned shall be recorded in the consumer's record, with the signature of the program administrator or program director and witness.

9040 **Adult Day Health Services Program.** In addition to the services provided by a Social Adult Day Services Program, an Adult Day Health Services Program provides health monitoring services and more extensive assistance with ADLs.

9040.1 **Required Services.** An Adult Day Health Services Program shall provide the following services, based on individual needs:

- a. Health monitoring;
- b. At least one meal that satisfies one-third of the required dietary allowance in compliance with the meal preparation and menu requirements described in the Environmental Safety section of Chapter 6 of these regulations;
- c. Nursing Services, carried out by a Registered Professional Nurse (RN) or Licensed Practical Nurse (LPN);
- d. Medication administration as outlined in Section 9030.2 (b)

9050 **Combined Program.** An Adult Day Services provider may meet licensure requirements to deliver both Social Adult Day Services and Adult Day Health Services Programs simultaneously or on different days of the week, to identified different consumers, at the same program site. The service delivery shall be commensurate with the consumer's identified needs. The record shall clearly reflect which program the consumer is enrolled in and that the program services meet the needs of the consumer.

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- 9060 **Night Program.** A night program is an Adult Day Services Program staffed by awake staff, offered between 5 PM and 7 AM to consumers with dementia who are often awake during the night time hours. The scope of services offered by either the Adult Day Health Services Program or the Social Adult Day Services Program shall be the same as if offered during the hours between 7 AM to 5 PM.

Activities are provided while the consumer is awake and the consumer is encouraged to sleep. The record shall reflect the daily hours the consumer is awake and the hours the consumer sleeps while at the program.

A consumer may attend a Night Program up to seven (7) times per week if a consumer is not attending the day time program for either Adult Day Health or Social Adult Day Services Programs, Consumer participation in a day time program and night time program is limited to seven (7) dates of participation in a seven (7) day period. At no time should an Adult Day Services Program provide twentieth-four (24) consecutive hour services to a consumer.

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CHAPTER 10: ADDENDUM

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References:

1. Statutory authority for these regulations is found under the following Titles in the Maine Revised Statutes Annotated:

Title 22, Chapter 958-A, Sections 3470-3487
Chapter 1505, Sections 6201-6209
Chapter 1663, Sections 7801-7804
Chapter 1665, Section 5107-A
Chapter 1679, Sections 8601-8605.
2. Additional references of use are:

The Department of Human Services, Bureau of Medical Services, *Maine Medical Assistance Manual*; Chapter II, Sections 19 and 26.

STATUTORY AUTHORITY: 22 M.R.S.A. §7801

EFFECTIVE DATE: October 15, 1997 (EMERGENCY -- expires January 13, 1998)
(Note: simultaneous emergency repeal of 10-149 Chapter 5 Section 61.)

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EFFECTIVE DATE: February 1, 1998